

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JOHN HAPCIC, JOHN COOPER and
FREDERICK DUNLAP,

Plaintiff(s),

REPORT AND RECOMMENDATION

-against-

CV 04-0069 (LDW) (ETB)

COMMANDING OFFICER, et al.,

Defendant(s).

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TO THE HONORABLE LEONARD D. WEXLER, United States District Judge:

This is a prison inmate pro se civil rights action, based on alleged violation of the Eighth and Fourteenth Amendment. The pro se plaintiffs, John Hapcic, John Cooper and Frederick Dunlap, members of the outlaw Pagan Motorcycle Club, seek damages for injuries allegedly arising from their arrest and subsequent confinement by the defendants - New York State, Hempstead and Lindenhurst Police Departments, as well as the Suffolk and Nassau County Sheriff's Departments. The events giving rise to arrest occurred at the Vanderbilt Convention Center in February 2002 and are well-known to the court. The plaintiffs herein were prosecuted in this court before you for federal RICO violations (CR 02-305), on which all entered pleas of guilty and were sentenced to terms of imprisonment. This action commenced in January 2004.

The same party plaintiffs filed a related action - Cooper v. President/CEO, et al., Vanderbilt Convention Center - seeking money damages from the Vanderbilt Convention Center arising from the melee caused by plaintiffs and other members of the Pagan Motorcycle Club when they attacked members of the rival Hell's Angels Motorcycle Club, who were holding an event at the Vanderbilt Hotel in February 2002. Pending before the court in that action is a Report and Recommendation, dated

October 24, 2005, to dismiss, pursuant to Rules 41(b) and 16(f), based on the same plaintiffs' failure to appear and to prosecute the action and failure to comply with the orders of the court.

By order, dated October 24, 2005, the court scheduled a conference for November 17, 2005. The plaintiffs failed to appear, although notified of the conference. The plaintiffs have not communicated with the court as to their failure to appear. The New York State defendants were represented at the conference by Assistant Attorney General Anne Leahey, who informed the court that an investigator had spoken to one of the plaintiffs, John Hapcic, who stated that he wanted to withdraw this action. Ms. Leahey reported that papers were sent to the address stated by Hapcic and that the withdrawal papers were returned undelivered.

The plaintiffs have failed to appear or otherwise communicate with the court. Based on their conduct in this action - as well as the related action - it appears that the pro se plaintiffs have abandoned this action.

RECOMMENDATION

This action should be dismissed, pursuant to Rules 16(f) and 41(b), Fed. R. Civ. P., based on the plaintiffs' failure to prosecute this action and failure to comply with the orders of the court.

FILING OF OBJECTIONS TO THIS REPORT AND RECOMMENDATION

Any objections to this Report and Recommendation must be filed with the Clerk of the Court with a copy to the undersigned within 10 days of the date of this report. Failure to file objections within the specified time waives the right to appeal the District Court's order. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1054 (2d Cir. 1993), cert. denied, 115 S.Ct. 86 (1994); Frank v. Johnson, 968 F.2d 298 (2d Cir.), cert. denied, 113 S.Ct. 825 (1992); Small v. Secretary of Health and Human Serv., 892 F.2d 15, 16 (2d Cir. 1989)(per curiam).

Dated: Central Islip, New York
November 18, 2005

/s/ E. Thomas Boyle
E. THOMAS BOYLE
United States Magistrate Judge